Filed 10/6/04 Vercelli v. Smith CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BERTRAM VERCELLI, Plaintiff and Respondent, v. JUNE SMITH et al., Defendants and Appellants.	B166187 (Los Angeles County Super. Ct. No. EC035102)

APPEAL from a judgment of the Superior Court of Los Angeles County. David M. Schacter, Judge. Affirmed.

Richardson & Harman, Paul F. Schimley and Richard C. Moore for Defendants and Appellants June Smith and Ouida Robinson.

John F. Hertz for Defendants and Appellants Joseph A. McDonald and Patrick Carey.

Hill, Farrer & Burrill, James A. Bowles and E. Sean McLoughlin for Defendant and Appellant Thomas Ott.

Hacker, Kanowsky & Braly and Jeffrey A. Hacker for Plaintiff and Respondent.

* * * * * *

Appellants Thomas Ott, June Smith, Ouida Robinson, Joseph McDonald, and Patrick Carey appeal from a judgment entered after the trial court denied their special motions to strike the first amended complaint of respondent Bertram Vercelli. We affirm.

CONTENTIONS

Appellants contend that: (1) The trial court erred in denying the special motions to strike under Code of Civil Procedure section 425.16;[1] (2) respondent failed to show that he would prevail on each cause of action at issue; (3) the trial court erred in relying on hearsay, speculation and unsupported inferences in denying the special motions to strike; (4) respondent failed to show a substantial probability of prevailing without producing admissible evidence sufficient to defeat the litigation privilege of Civil Code section 47; and (5) the defamation cause of action should not have survived the special motion to strike in the absence of clear and convincing evidence of actual malice because respondent is a limited public figure.

FACTS AND PROCEDURAL HISTORY

Respondent filed a first amended complaint (FAC) against Ott, McDonald, Carey, Smith, and Robinson,[2] for: (1) retaliatory termination in violation of public policy (against Universal Studios Credit Union (Credit Union)); (2) retaliatory termination in violation of Government Code section 12900 et seq. (against all defendants); (3) common

---

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] James Harris, Jr., James Maull, Larry Avicola, Leonard Dirisio, Beverly Brady, Willa King-Allen, Paula Brand, Bonnie Heath, Corean Foster, Jan McMillan, Valerie Adams, and Universal City Studios Credit Union were also named in the FAC, but are not parties to this appeal.

law wrongful termination (against Credit Union); (4) defamation (against Smith, McDonald, and Carey); (5) defamation (against Robinson, Ott, McDonald, and Carey); (6) slander (against Robinson, Ott, McDonald, and Carey); and (7) cancellation of illegal proxies (against Credit Union).

According to the allegations of the FAC, Credit Union, a state-chartered and regulated credit union, has more than 9,000 members. Credit Union and its chief executive officer (CEO) are managed by a board of directors. The board of directors is subject to oversight by a supervisory committee, which is made up of volunteers.

Respondent had been employed by Credit Union for more than 40 years and was a member of Credit Union's board of directors. From 1994 until June 17, 2002, respondent was employed as CEO of Credit Union. Robinson is a member of the supervisory committee of Credit Union. Smith is an agent and employee of Credit Union.

Ott and his law firm, Ott and Hoffman, were hired to represent Credit Union in 2001. Ott left the practice of law in September or October 2001 and became employed by California Credit Union as its CEO. McDonald and Carey, and their law firm, McDonald and Carey, were hired to replace Ott at Credit Union. Carey is the son-in-law of Ott.

In February 2002, Credit Union's accountants informed respondent that a 1099 IRS form was required to be filed for all guests of Credit Union at meetings where payments exceeded $600 per year. The accountants directed the chairman of the board of directors, James Harris, Jr., to examine Smith's expenses of $7,234 incurred for the California Palm Tree Convention in June 2001; to approve a revised travel and expense policy; and to file a form 1099 with the IRS for outside guests of the board members. These requests were ignored by the board of directors.

Lawrence Chung of the California Department of Financial Institutions audited Credit Union, and directed respondent to file a bond claim on behalf of Credit Union with its bond insurance company, CUNA Mutual Group, for losses sustained by Credit Union due to the expenses incurred by Smith for the convention. Chung also requested respondent to file a suspicious activity report arising out of unsupported expenses

incurred by Smith for the convention. Smith included her spouse, daughter, and her daughter's fiancé as guests to the convention, violating state regulations governing credit unions.

In response to respondent's inquiry, McDonald and Carey also instructed respondent to file a bond claim against Smith.

Ott, McDonald, and Carey drafted Smith's response to the bond claim, in which Smith denied fraudulent conduct and mentioned "a growing level of dissatisfaction on the part of the Board with certain members of the credit union's management." She stated that: "The Board has been attempting to bring the credit union's business and accounting practices into compliance with state and federal guidelines at the resistance of management when those changes affect them. While this has certainly produced a level of friction between the Board and management, I never expected it to degenerate into these types of allegations."

The annual meeting of Credit Union was scheduled for June 25, 2002. Prior to the meeting, Smith solicited proxies which would have eliminated respondent from the board of directors. Respondent solicited proxies for himself by adding materials, for which he paid, to Smith's mailing. Respondent received a majority of the proxies by a two-to-one vote. Ott, McDonald, and Carey refused to hold the annual meeting, asserting that the proxies were invalid.

On June 17, 2002, Robinson drafted a letter on behalf of the supervisory committee, stating that it terminated respondent from his position as CEO and from his position as a member of the board of directors "for misuse of Credit Union resources and inappropriate conduct." On that same date, Ott, whose employment with California Credit Union had been terminated, was hired as respondent's successor. Respondent was suspended as a member of the board of directors, subject to later action by the full Credit Union membership.

McDonald and Carey initially prevented respondent from responding to the letter by refusing to give him access to the membership list on the basis that it would invade the

privacy of the members. Subsequently, McDonald and Carey gave respondent the membership list, but required him to pay his own cost of printing and mailing.

On June 21, 2002, appellants, through Robinson, signed and sent a letter prepared and approved by Ott, McDonald, and Carey to the Credit Union membership stating that respondent had been suspended from the board of directors for "misuse of Credit Union resources."

On June 27, 2002, James Harris, Jr., sent a letter to respondent, prepared by Ott, McDonald, and Carey, stating that "the Board decided to terminate your employment effective immediately due to performance issues." Appellants knew that the statement was false, fraudulent and malicious.

Ott, McDonald, and Carey prepared a letter to be read at the annual meeting, which stated that respondent had "committed felonies" by the misuse of credit union assets and misrepresentation of the business affairs of the credit union. Robinson read the letter to the members attending the annual meeting held on July 25, 2002. Appellants knew that the statement was false, fraudulent, and malicious.

After respondent filed the FAC, Ott filed a special motion to strike under section 425.16. Smith and Robinson filed a separate special motion to strike, which was joined by McDonald and Carey. In opposition to the special motions to strike, respondent declared that at the annual meeting, Ott said Credit Union had sustained a loss of $238,000 stemming from the theft of $156,000 from an ATM machine by an independent contractor. Ott claimed that Credit Union would aggressively pursue recovery of the money from the insurance company, and that somebody had lied about the bond company and insurance. Respondent declared that he had filed a proof of loss and bond claim with the insurance company, upon the direction of Credit Union's accounting firm. Respondent was advised that the loss could be reported as an asset until Credit Union exhausted all means to recover the money, at which time it would be stated as a loss.

The trial court denied the special motions to strike on the basis that the moving papers did not show that appellants were engaged in First Amendment activity, and the

communications did not occur in a public forum. Moreover, the trial court found that there was a probability that respondent would prevail on the claim.

This appeal followed.

DISCUSSION

I. Whether section 425.16 applies

A. The anti-SLAPP statute

Section 425.16, also known as the anti-SLAPP (strategic lawsuit against public participation) statute, permits a court to dismiss certain nonmeritorious claims in the early stages of the lawsuit. (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.) Under section 425.16, subdivision (b)(1), "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." The SLAPP suits "are generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so." (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 816, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68.)

Section 425.16, subdivision (e) defines acts taken in furtherance of a person's right of petition or free speech in connection with a public issue to include: (1) written or oral statements or writings made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) written or oral statements or writings made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest. (§425.16, subd. (e)(1)-(4).)

In determining whether to grant or deny a section 425.16 motion to strike, the court engages in a two-step process. (*Shekhter v. Financial Indemnity Co.* (2001) 89 Cal.App.4th 141, 150 (*Shekhter*).) First, the court must decide whether the defendant has met his or her threshold burden of showing that his or her acts were taken in furtherance of the defendant's constitutional rights of petition or free speech in connection with a public issue. (*Ibid*.) If the defendant meets his or her burden, then the court determines whether the plaintiff has carried his or her burden of showing that there is a probability that he or she will prevail on the claim. (*Id.* at pp. 150-151.)

On appeal, we independently review whether section 425.16 applies and whether the plaintiff has a probability of prevailing on the merits. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)

B. Whether section 425.16, subdivision (e)(1) and (e)(2) apply

1. The statements of Ott, Smith, Robinson, Carey, and McDonald

Ott, Smith, and Robinson contend that their statements are protected under section 425.16, subdivision (e)(1), statements made in an executive or official proceeding authorized by law, and (e)(2), statements made in connection with an issue under consideration in an executive or official proceeding authorized by law.

Ott urges that his statements were made in connection with Credit Union's annual meeting, which was an official proceeding because it was statutorily required by Financial Code section 14552. That section provides: "The supervisory committee shall, within seven days after suspension of any or all members of the credit committee, or any member of the board of directors, or any other officer, cause notice of a special meeting to be given to the members to take such action regarding the suspension as the members deem necessary."

Similarly, Robinson urges that her letter dated June 21, 2002, is protected under section 425.16, subdivision (e)(1), because it also concerned respondent's suspension under Financial Code section 14552. In that letter, she informed members of Credit Union that the supervisory committee voted to suspend respondent from the board of

directors for misuse of Credit Union resources by soliciting proxies for his reelection to the board. She also asserts that the letter that she read to the members of Credit Union at the annual meeting was conducted at an official proceeding under Financial Code section 14450, which states: "The credit union shall be directed by a board . . . of directors . . . to be elected by the members at their annual meeting." In that letter, she stated that respondent had committed felonies by the misuse of Credit Union assets and misrepresentation of the business affairs of Credit Union.

Smith claims that her letter to CUNA Mutual was filed in response to respondent's bond claim. She contends that since the bond claim was filed at the direction of the Department of Financial Institutions, it must be considered in connection with an executive proceeding. Alternatively, Smith argues that her letter should be protected as a statement in writing made in connection with the official proceeding of an audit conducted pursuant to the state's regulatory authority.

McDonald and Carey join in Robinson and Smith's arguments, urging that they did not make utterances separate from Smith and Robinson, but were alleged merely to have advised Smith and Robinson in making their statements.

2. Statements made in or in connection with an official proceeding authorized by law

We first examine whether appellants' statements were made in connection with an official proceeding authorized by law under section 425.16, subdivision (e)(2), and conclude they were not.

Cuenca v. Safeway San Francisco Employees Fed. Credit Union (1986) 180 Cal.App.3d 985, 994 (*Cuenca*) is instructive. In that case, the plaintiff, a terminated manager of a credit union, filed a complaint for defamation against the credit union and its chairman. The First District reversed the trial court's grant of the defendants' motion for summary judgment which was based on the litigation privilege of Civil Code section 47. That section protects publications made in the discharge of an official duty in any legislative proceeding, judicial proceeding, any other official proceeding authorized by

law, or in the initiation of proceedings authorized by law and reviewable pursuant to certain parts of the Code of Civil Procedure.

In analyzing what constitutes an official proceeding, the court cited to *Hackethal v. Weissbein* (1979) 24 Cal.3d 55 (*Hackethal*), where our Supreme Court concluded that the litigation privilege of Civil Code section 47 applies only to governmental bodies performing governmental proceedings or quasi-judicial proceedings. The *Hackethal* court "explicitly rejected the contention that merely because state law required the creation of a review committee, every body so created was 'official.'" (*Cuenca, supra,* 180 Cal.App.3d at p. 994.)

In *Cuenca,* the court concluded that even though credit unions are highly regulated and federal statutes empower the supervisory committee of a federal credit union to make annual audits and to suspend officers, these statutorily created duties do not make investigations by the supervisory committee an official proceeding. (*Cuenca, supra,* 180 Cal.App.3d at p. 995.) The court determined that the credit union was not a governmental agency, nor was the supervisory committee or its chairman acting in the capacity of a governmental official performing official duties when they made oral statements and issued written reports concerning plaintiff to the effect that he was receiving kickbacks on insurance policies, spending much of his time doing outside liquidation work, keeping infrequent hours, and making irregular business expense claims.

While *Cuenca* addressed the litigation privilege of Civil Code section 47, we find that its definition of "other official proceeding authorized by law" to be useful in analyzing the anti-SLAPP legislation of section 425.16. The choice of language is not coincidental -- both statutes afford protection to statements made in "other official proceeding authorized by law." Moreover, we find support for the requirement that the "official proceeding" must be conducted by a governmental body in *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106 (*Briggs*). Although the California Supreme Court broadly construed the scope of section 425.16, it noted that the Legislature evinced an intent that the statute was meant to "protect all direct petitioning

of governmental bodies (including, as relevant here, courts and administrative agencies) and petition-related statements and writings." (*Briggs, supra,* at p. 1121, italics added.) Further, we note that *Hackethal, supra,* 24 Cal.3d 55, was superseded by statute when the Legislature amended Civil Code section 47, subdivision (b) to include "proceeding authorized by law and reviewable pursuant to certain parts of the Code of Civil Procedure" in order to extend the protection of Civil Code section 47 to include not only witnesses who testify in peer review proceedings conducted by governmental agencies, but to private entities as well. (*Moore v. Conliffe* (1994) 7 Cal.4th 634, 653.) Section 425.16, subdivision (e)(2) has no such similar clause.

Only Smith and Robinson attempt to distinguish *Cuenca*. They argue that *Cuenca* concerned the federal credit union act, rather than the California credit union law, and that *Cuenca* concerned the litigation privilege rather than the anti-SLAPP statute, a fact which we have noted. It does not matter that federal statutes, rather than state statutes, are implicated, since defendants in both cases relied on the federal or state regulatory schemes to imbue their organizations with a mantle of officiousness. We are not persuaded by Smith and Robinson's argument that the phrase "other official proceeding authorized by law" cannot be construed similarly because under the anti-SLAPP statute, that phrase is part of a threshold analysis to determine if free speech rights have been implicated, while the litigation privilege is an absolute bar. This seems to be a distinction without a difference, since the characterization of the organization as a government agency is a requirement for protection under both statutes. Nor does Smith and Robinson's reference to the policy behind the anti-SLAPP statute to encourage participation in public affairs advance their cause, since the statute was designed to cope with meritless suits brought by large companies to deter common citizens from exercising their political rights. Those cases typically concern large land developers against environmental activists, or neighborhood associations chilling the defendant's political or other legal opposition to the developer's plan, situations distinct from the case at hand. (*Wilcox v. Superior Court, supra,* 27 Cal.App.4th at p. 815.)

We conclude that the statements and letters of which respondent complains were not conducted in connection with official proceedings as contemplated by section 425.16. Thus, the trial court properly found that the FAC was not amenable to appellants' motion to strike. To hold otherwise would bring every meeting and action of banks, savings and loan, or credit unions within the scope of section 425.16.

3. Statements made in or in connection with an issue under consideration by an executive proceeding

We are not convinced by Smith's argument that the bond claim response was filed in connection with an issue under consideration by an executive body, under section 425.16, subdivision (e)(1) or (e)(2).

Smith cites *Copp v. Paxton* (1996) 45 Cal.App.4th 829 (*Copp*), for the proposition that Chung from the Department of Financial Institutions was acting in his executive capacity when he directed respondent to file a bond claim on behalf of Credit Union. In *Copp*, the court determined that under Civil Code section 47, subdivision (a), the executive officer privilege can be applied to federal and state officials who exercise policymaking functions. (*Copp,* at p. 844.) These functions must be discretionary as opposed to ministerial. (*Ibid*.)

Even were we to conclude that Chung was acting in an executive capacity, the audit by the state had been completed when Smith filed her response. Respondent filed the bond claim with a private insurance company and its acceptance or rejection was within the control of the insurance carrier.

C. Whether section 425.16, subdivision (e)(3) and (e)(4) apply

Section 425.16, subdivision (e) also defines acts taken in furtherance of a person's right of petition in connection with a public issue to include subdivision (e)(3), written or oral statements made in a place open to the public or a public forum in connection with an issue of public interest, and subdivision (e)(4), any other conduct in furtherance of the

exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Appellants claim that Robinson's reading of a letter at the annual board meeting on July 25, 2002, and Ott's statements were protected under subdivision (e)(3) and (e)(4) because both communications were free speech pertaining to a public issue, the qualification of a public official seeking to be elected to run Credit Union's affairs. We disagree.

We first conclude that the matter here is not an issue of public interest. A matter of public interest does not equate to mere curiosity. (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132 (*Weinberg*).) It is something of concern to a substantial number of people rather than to a small, specific audience. (*Ibid.*) There must be a relationship between the challenged statements and the public interest, and the focus of the speaker's conduct should be the public interest; the assertion of a broad and amorphous public interest is not sufficient. (*Id.* at pp. 1132-1133.) Thus, statements of public interest were found to exist where they involved a large church that had been the subject of extensive media coverage, concerned a shelter that had been the subject of public controversy including land use hearings, and alleged domestic violence against a nationally known political consultant who had used the domestic violence issue in political campaigns. (*Id.* at p. 1133.)

In *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 926 (*Rivero*), where documents were circulated to members of a union regarding a janitorial supervisor against whom allegations of misconduct were made, but not substantiated, the court concluded that the publications did not involve a matter of public interest. The court stated that the plaintiff had never previously received public attention or media coverage, and the matter of his supervision of eight custodians, was not a matter of public interest.

Indeed, a defendant's statement accusing the plaintiff of criminal conduct is defamatory on its face. (Civ. Code, §§ 45, 45a, 46; *Weinberg, supra,* 110 Cal.App.4th at p. 1135.) Assertions of criminal conduct do not automatically make them a matter of

public interest. (*Weinberg,* at p. 1135.) Thus, in *Weinberg,* the court held that allegations made to a collector's association verbally and through newsletters, that the plaintiff, a retired police officer, was a thief who had stolen a collector's coin, were not subject to protection under section 425.16, subdivision (e)(3) and (e)(4). Nor was the plaintiff a public figure, one "who has assumed a role of special prominence in the affairs of society, who occupies a position of persuasive power and influence, or who has thrust himself to the forefront of a particular public controversy in order to influence the resolution of the issues involved." (*Weinberg,* at p. 1130.) There, the court found no special protection against liability for defamation existed for false and damaging allegations to the plaintiff's reputation.

Du Charme v. International Brotherhood of Electrical Workers (2003) 110 Cal.App.4th 107 (*Du Charme*) gives us guidance. There, after an assistant manager of the local was terminated from his position, he filed a defamation action against the union for stating that he was terminated for financial mismanagement on the union's website. The court held that the union failed to show connection with a public issue under section 425.16, subdivision (e)(3) and (e)(4) because the matter of the plaintiff's termination was not connected to any ongoing controversy, debate or discussion, as must be shown where the issue is of interest to a limited, defined portion of the public. (*Du Charme,* at p. 119.)

Here, the matter of respondent's qualifications as a board member and CEO of Credit Union is not one of public interest. We first note that respondent was not a public figure, despite appellants' attempt to characterize him as an elected public official. He was merely a member of the board of directors of a credit union, and appellants have not shown that he thrust himself into a particular public controversy or assumed a position of power and influence. As in *Rivero,* the mere fact that appellants mailed letters to members of Credit Union regarding respondent's suspension does not make the matter one of public interest.

Nor do we find that the annual meeting was a public forum. A public forum is a place open to the general public for purposes of assembly. (*Weinberg, supra,* 110 Cal.App.4th at p. 1130.) Newsletters, media outlets, and other means of communication

where access is selective, are not public forums. (*Ibid.*) Appellants have not shown that there was media coverage or open hearings regarding respondent's suspension and termination. Indeed, according to respondent, appellants hired guards to maintain secrecy at the annual meeting, and prohibited transcription of the proceedings.

Nevertheless, citing *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468 (*Damon*), appellants contend that section 425.16, subdivision (e)(3) and (e)(4) do apply. In *Damon,* the Fourth District determined that the anti-SLAPP statute applied under section 425.16, subdivision (e)(3) where statements regarding the general manager of a homeowners association, and specifically, whether his position should be turned over to a professional management company, were made through board meetings of a homeowners association and newsletters disseminated to its 3,000 members.

Even assuming the correctness of its decision, we find *Damon* to be distinct from the instant case. There, the court defined a public forum as a place open to the public where information is freely exchanged. The court found that the board meetings fit the definition because the rules adopted by the board were promulgated at board meetings which were televised, open to all interested parties, served as a place where members could communicate their ideas, and served a function similar to that of a governmental body. (*Damon, supra,* 85 Cal.App.4th at p. 475.) Moreover, the homeowners association board was a quasi-governmental entity, paralleling the powers, duties, and responsibilities of a municipal government in governing activities conducted within the common areas and extending to life within the confines of the home. (*Ibid*.) Also, the court considered the homeowners association newsletter a public forum because "it was a vehicle for communicating a message about public matters to a large and interested community." (*Id.* at p. 476.)

Next, the court found that the allegedly defamatory statements were an issue of public interest because they concerned "the very manner in which this group of more than 3,000 individuals would be governed -- an inherently political question of vital importance to each individual and to the community as a whole." (*Damon, supra,* 85

Cal.App.4th at p. 479.) Again, the court stressed the fact that the homeowners association functioned as a second municipal government. (*Ibid*.)

Here, as previously discussed, the annual meeting of Credit Union was not a public forum. It was closed to the public, with guards present to keep the public out. The board did not allow a certified court reporter to transcribe the meeting. Nor was there media coverage or publication of the events to the public. Indeed, as noted by respondent, McDonald and Carey have adopted the position that the membership list of Credit Union is proprietary and not available to the general public.

As the *Du Charme* court noted, *Damon* concerned a quasi-governmental board which was similar to a governmental entity dealing with public issues of self-governance of a large body of people, including matters of security, employee relations, maintenance activities and contractor selection. (*Du Charme, supra,* 110 Cal.App.4th at p. 118.) These decisions extended to life within the home for members who owned residential property in common. Credit unions, on the other hand, are financial cooperatives whose members can leave at any time.

Appellants' citation to *Macias v. Hartwell* (1997) 55 Cal.App.4th 669 (*Macias*) also fails to advance their cause. In that case, Division Six of this district determined that a complaint filed by a former business agent and secretary-treasurer of a 10,000-member union was subject to a SLAPP motion. There, the plaintiff, who was terminated for misuse of union funds, ran against the defendant for the office of president, claiming that she was terminated for disloyalty to him. In response, the defendant sent out a campaign flier stating that plaintiff was terminated for "'misappropriation of Union funds, insubordination and excessive absence, plus disloyalty.'" (*Id.* at p. 671.) After she lost the election, the plaintiff filed a defamation action against the defendant. Division Six determined that the anti-SLAPP statute applied to campaign statements made in a union election because the right of free speech was implicated by both the federal Labor-Management Reporting and Disclosure Act of 1959 and by the First Amendment. Division Six analogized the 10,000-member union to a large, powerful organization that could impact the lives of many individuals, such as the Church of Scientology. (*Id.* at

p. 674.) Moreover, the court held that speech by mail, such as the mailing of the campaign flyer to 10,000 members in six counties, was a recognized public forum under section 425.16. (*Macias v. Hartwell,* at p. 674.) The court also concluded that the plaintiff did not present evidence that the publication was untruthful or made with malice, and that the trial court properly found there is no likelihood that the plaintiff would prevail on the complaint.

Here, as previously stated, we decline to characterize the complained of actions as matters of public interest. In *Macias,* the union was a collective of workers over six counties. The decisions made by its president are more akin to decisions made by the homeowners association in *Damon,* since, presumably, the union's actions would affect working conditions, salaries, and health benefits of workers. Here, membership in the board of directors of a credit union does not have the far reaching consequences of either a union or a quasi-governmental homeowners association. Respondent does not complain about statements made in a campaign flyer distributed during an election, but of statements made in response to a bond claim, at the annual meeting, and in his letter of termination, which, as we have previously decided, were not made in the context of a public forum.

We conclude that the trial court did not err in denying appellants' special motion to strike under section 425.16, subdivision (e)(3) and (e)(4).

Since we have found that appellants have not met the threshold requirement of showing that the statements and letters were made in furtherance of their constitutional right to petition or free speech in connection with the public issue, we need not reach the issue of whether respondent has met his burden of showing that there is a probability that he will prevail on the claim. Accordingly, we need not address whether the absolute privilege of Civil Code section 47 barred respondent's claims against appellants. Nor need we determine whether respondent was a limited public figure who must prove that defamatory statements were made with actual malice. Furthermore, we need not determine whether respondent is able to prove special damages, whether truth is a defense to the claims for defamation, whether the statements were nonactionable

opinions, or whether the trial court erred in overruling Ott's objections to evidence submitted by respondent in support of his claim that he would probably prevail on the merits. Finally, we need not decide whether respondent can prove that he was fired for retaliation because he was a whistleblower.

DISPOSITION

The judgment is affirmed. Respondent shall receive costs of appeal.

NOT FOR PUBLICATION.

_____ J.

NOTT

We concur:

_____ P.J.

BOREN

_____ J.

DOI TODD